

EXHIBIT 10

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 2666
(JNE/FLN)

This Document Relates to All Actions

**Joint Agenda and Report for
December 21, 2017 Status Conference**

Pursuant to Pretrial Order #3, undersigned Counsel submit this Joint Agenda and Status Report for the December 21, 2017 Status Conference:

1. Pretrial Orders and Case Schedule

Under the Court's order of October 20, 2017 (ECF No. 987), bellwether fact discovery in *Gareis* (16-cv-4187), the sole remaining federal bellwether case, was to be completed by December 8, 2017. Initial expert reports were served by Plaintiffs on November 27, 2017 (an extension of three days, per the parties' agreement) and rebuttal expert reports will be served by Defendants on December 18, 2017 (an extension of three days, also by the parties' agreement). Depositions of experts are to be completed by January 30, 2018. Case-specific dispositive motions are to be filed by February 6, 2018. *Gareis* is to be trial-ready by April 30, 2018.

The parties are meeting and conferring with respect to making recommendations to the Court for a process by which the federal bellwether trial pool might be repopulated, and will be prepared to report to the Court on these efforts at the status conference. If the

parties do not reach resolution in advance of the status conference, the parties are each prepared to submit their proposed pretrial orders in advance of the status conference.

2. Plaintiff Fact Sheets (“PFSs”)

Defendants have moved to dismiss an additional set of cases based on alleged PFS deficiencies. That motion is noticed to be heard by the Court at the December 21 status conference. Defendants have also, as in prior months, addressed lists of PFS disputes to the Court as provided by PTO No. 14. Plaintiffs do not concede that cases included on these lists are in fact deficient.

3. Update on number and status of cases transferred into the MDL

As of December 7, 2017, there were 4,116 active federal Bair Hugger cases pending in this MDL. Not all filed cases have been served on Defendants.

4. Overview of related state court proceedings

There are 59 filed cases pending before Judge Leary in Ramsey County. One of these (*Walker*) has been designated as a bellwether. The following schedule has been set for *Walker*:

- Case specific discovery commences: 2/20/18
- Case specific discovery completed: 5/1/18
- Initial expert reports and disclosures: 4/13/18
- Rebuttal experts and disclosures: 5/15/18
- Depositions of expert witnesses completed: 6/29/18
- Case specific dispositive motions filed: 8/23/18
- Trial: 10/15/18

There are currently four other state court cases pending outside of Ramsey County, Minnesota:

- *Rodriguez v. 3M Co., Arizant Healthcare, Advocate Health and Hospitals Corporation, and Medtronic Sofamor Danek U.S.A., Inc.*, pending in the Circuit Court of the Nineteenth Judicial Circuit, Lake County, Illinois, Case No. 15-L-930, before the Honorable Thomas J. Schippers. Plaintiffs are represented by DeSanto Morgan & Taylor. The *Rodriguez* case was filed on December 31, 2015. Trial has been set for July 30, 2018. Plaintiffs' depositions are scheduled for December 18, 2017. The next status conference is scheduled for January 23, 2018.
- *Acosta v. 3M and Arizant Healthcare, Inc.*, pending in the Fourth Judicial District Court, Missoula County, Montana, Case No. DV-16-769, Dept. No. 4, Plaintiffs are represented by the Rossbach Law Firm. The *Acosta* case was filed on September 9, 2016. 3M and Arizant have not been served.
- *Petitta v. Ray R. Trey Fulp III et al.*, pending in the District Court of Hidalgo County, Texas. Plaintiff is represented by the Garcia & Martinez Law Firm. The *Petitta* case was filed on November 14, 2016. Only written discovery has occurred.
- *Bythwood v. 3M, Arizant et al.*, pending in the Circuit Court of Jefferson County, Alabama. Plaintiff is represented by Frank O. Hanson, Jr. The *Bythwood* case was filed on February 15, 2017. On April 7, 2017, the Court issued an order allowing fact discovery to commence. The Court held a status conference on October 12, 2017, setting a fact discovery deadline of October 11, 2018 and scheduling a status

conference for October 12, 2018, at which time the Court will set a trial date and deadlines for dispositive motions and expert disclosures/depositions.

5. Overview of Canadian Action

On June 22, 2016, Defendants were served with a Canadian putative class action, *Driessen v. 3M Canada Company, 3M Company, and Arizant Healthcare Inc.*, filed in Ontario Superior Court of Justice, Court File No. 16-69039. Plaintiff *Driessen* seeks to represent a putative class of “[a]ll persons residing in Canada who had the 3M Bair Hugger Forced-Air Warming Device used on them during surgery.” (*Driessen* Cplt. at ¶ 4.) Plaintiff *Driessen* is represented by Jeff Orenstein and Andrea Grass of the Consumer Law Group Professional Corporation in Ottawa, Ontario. Defendants have retained Canadian counsel, Tim Buckley and Kate Crawford of Borden Ladner Gervais. On August 8, 2016, Defendants filed their Notice of Intent to Defend. There has been no additional case activity since the September 2017 MDL Joint Status Report.

6. Additional pretrial orders (including, but not limited to, rules and procedures, preservation order, and protective order of confidentiality)

As noted above, the parties are continuing to meet and confer concerning a proposed process to repopulate the bellwether trial pool and will report on the status of those discussions at the status conference. Separately, Defendants are submitting a proposed pretrial order that would set a procedure for substitution of plaintiffs who die after their actions are commenced. Plaintiffs do not agree to entry of the order.

7. Status of Discovery

Bellwether discovery. Case-specific fact discovery in *Gareis* concluded on December 8, 2017, except that there are two outstanding third-party subpoenas issued by Defendants on December 8 that relate to product identification. Both subpoenas have a return date of December 15. Defendants may seek leave to conduct additional fact discovery relating to product identification, depending on the responses received to these subpoenas. Plaintiffs reserve their right to oppose any additional fact discovery.

Plaintiffs disclosed their case-specific initial expert reports on November 27, and Defendants will disclose their rebuttal reports on December 18. Expert depositions on case specific issues are presently being scheduled and will occur in January 2018.

Dated: December 18, 2017

Respectfully submitted,

Jerry W. Blackwell (MN #186867)
Benjamin W. Hulse (MN #0390952)
BLACKWELL BURKE P.A.
431 South Seventh Street
Suite 2500
Minneapolis, MN 55415
Phone: (612) 343-3256
Fax: (612) 343-3205
Email: blackwell@blackwellburke.com
myoung@blackwellburke.com
bhulse@blackwellburke.com

Bridget M. Ahmann (MN #016611x)
FAEGRE BAKER DANIELS LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
(612) 766-7000
Email: bridget.ahmann@faegrebd.com

**Counsel for Defendants 3M Company
and Arizant Healthcare, Inc.**

Michael V. Ciresi (MN #0016949)
Jan M. Conlin (MN #0192697)
CIRESI CONLIN LLP
225 S. 6th St., Suite 4600
Minneapolis, MN 55402
Phone: 612.361.8202
Email: MVC@CiresiConlin.com
JMC@CiresiConlin.com

Ben W. Gordon, Jr. (*Pro hac Vice*)
LEVIN, PAPANTONIO, THOMAS,
MITCHELL, RAFFERTY & PROCTOR, P.A.
316 South Baylen Street, Suite 600
Pensacola, FL 32502-5996
Phone: (850) 435-7091
Fax: (850) 435-7020
Email: bgordon@levinlaw.com

Genevieve M. Zimmerman (MN #330292)
MESHESHER & SPENCE, LTD.
1616 Park Avenue South
Minneapolis, MN 55404
Phone: (612) 339-9121
Fax: (612) 339-9188
Email: gzimmerman@meshbesh.com

Co-Lead Counsel for Plaintiffs